

Pre-sale information or conduct

Complaints we receive about pre-sale information or conduct include claims that:

- a consumer was given misleading information or not given appropriate information about a product while it was being sold to them
- a consumer was given misleading information or not told about key terms and conditions of a product, for example, cancellation timeframes, or that there would be exit fees or network unlocking charges
- the provider did not tell a consumer, when it was clear the consumer was entering a contract for a product for someone else to use - for example their child or partner - about the level of risk involved
- a consumer was harassed or coerced by a provider to buy a product, including during telemarketing or door to door sales.

In this position statement, when we use the term **product** we are referring to both telecommunications goods and services. When we use the term **information** we are referring to all information, provided verbally or in writing, about a telecommunications product.

For complaints involving capacity to contract and contract terms see our position statement [Contracts](#).

Laws and codes of practice

Some laws and codes of practice relevant to telecommunications pre-sale information or conduct are:

- [Competition and Consumer Act 2010, Schedule 2 The Australian Consumer Law](#)
- The common law of contracts
- [Telecommunications \(International Mobile Roaming\) Industry Standard 2013](#)
- [Telecommunications \(Customer Service Guarantee\) Standard 2011](#)
- [Fax Marketing Industry Standard 2011](#)

- [Telemarketing and Research Calls Industry Standard 2007](#)
- [Telecommunications Consumer Protections \(TCP\) Code 2015](#)
- Industry Guideline: [Customer Authorisation 2015](#)
- Industry Guidance Note: [Migration Of Back-To-Base Medical And Security Alarms To Fibre To The Premises \(FTTP\) Open Access Networks – Considerations](#)
- [Telecommunications \(Backup Power and Informed Decisions\) Service Provider Determination 2014](#)

Our approach

When we deal with complaints about pre-sale information or conduct we consider the law, good industry practice, and fairness in all the circumstances.

The law

Rules in the [Australian Consumer Law](#) include:

- prohibition of misleading or deceptive conduct

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- prohibition of unconscionable conduct in connection with the supply of goods or services
- prohibition of harassment and coercion when supplying goods or services
- prohibition of unfair practices including false or misleading representations about goods or services, or misleading conduct as to the nature or suitability of goods or services
- informing a consumer if a cooling off period applies.

The Australian Consumer Law sets out rules for unsolicited sales (for example, telemarketing or door to door sales), including:

- the consumer must be offered a cooling off period of ten working days
- the consumer must be given a document containing the terms of the agreement and supplier information
- the consumer must be given a notice that they can use to terminate the agreement within the applicable termination timeframes.

The Telemarketing and Research Calls Industry Standard and Fax Marketing Industry Standard set out additional rules for unsolicited sales made by phone or by fax, including the set times of day that these cannot take place.

The International Mobile Roaming Industry Standard sets out additional rules for providers that supply international mobile roaming (IMR) services including:

- the provider must, before entering into a contract for IMR services, inform their customers of available spend management tools and how these can be accessed
- until 23 May 2016 a provider that does not have its own mobile network must give its customers a range of pre-departure information before or while supplying IMR on post-paid or pre-paid services that are automatically topped up.

Good industry practice

The Telecommunications Consumer Protections Code includes the following rules:

Communication with consumers

A provider must communicate with consumers in plain language, and in a way that is appropriate to the consumer's communication needs. It must communicate its offers in a way which is clear, accurate and not misleading.

Availability of terms and conditions

All relevant terms and conditions for a product must be viewable on, and downloadable from, a website.

Telecommunications offers

A provider must give a summary - called a **critical information summary** - of each of its telecommunications offers. The critical information summary must be a standalone document. The information contained in the critical information summary must be clear, accurate, free of material omissions, relevant, current, and timely. It must include information such as a description of the service, the minimum contract terms and pricing.

The provider must also make available other relevant information about its telecommunications offers to help the consumer compare products. This includes:

- billing and payment information
- how the consumer can estimate their usage of a product, and choose the product that meets their needs
- technical information about any telecommunications goods forming part of an offer
- post-sale support information
- when relevant, mobile network coverage for the telecommunications product, including a map or diagram.

If a consumer identifies a particular need to a provider, the provider must tell the consumer if it has an offer that may suit that particular need.

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Advertising

Advertising must be clear, accurate, free of material omissions, relevant, and current. A provider must include any important conditions, limitations, qualifications or restrictions about an offer in its advertising.

Providers must not use the terms 'unlimited' or 'free' to advertise a product unless the product is genuinely unlimited or free. Providers must not use the term 'cap' to advertise a product unless the cap is the maximum charge that can be applied to the consumer's usage.

When a consumer is recontracting the provider must tell the consumer about features available on new plans that may not be available on their existing plan.

Selling practices

A provider must make sure its sales representatives are trained to promote and sell its products in a fair and accurate manner to help consumers make informed purchasing decisions. All information given must be clear, accurate, free of material omissions, relevant, current and timely.

Medical and security alarms

The Industry Guidance Note Migration Of Back-To-Base Medical And Security Alarms To Fibre To The Premises (FTTP) Open Access Networks – Considerations recommends that the sales conversation with the consumer before migration to a Fibre To The Premises (FTTP) product includes the following:

- asking the consumer about the presence of any medical or security alarms
- advising the consumer to speak to their alarm service provider about the compatibility of their alarm service
- identifying to the consumer what, if any, in-premises wiring is provided by the provider as part of the product, and if none, explaining the steps the consumer can take to have the wiring completed by a registered cabler
- advising the consumer what options are available

for battery back-up and any potential limitations of those options.

TIO view

Informed consent

Before a consumer can give informed consent they should be offered, or given access to, all relevant information about a product at the time of making an agreement.

Arrangements that promote informed consent include:

- clear, accurate and plainly stated information
- cooling-off periods
- when consumers are consenting face-to-face, being given enough time to read the information about the product and ask questions
- for online sign-up processes, the use of opt-in instead of opt-out mechanisms
- when consumers are consenting over the telephone:
 - providing information in a way that promotes consumer understanding, for example by breaking up the information into sections
 - making sure sales agents can communicate effectively and the call environment is appropriate
 - using active questioning to make sure the consumer understands important contract terms
 - providing genuine opportunities for the consumer to ask questions.

Keeping records of information given to a consumer

Providers should keep information given to a consumer leading up to a sale for a reasonable period of time. For example, it may be reasonable for a provider to keep records relating to a fixed term contract for the duration of the contract.

Providers should be aware that when we handle a complaint about information given to a consumer leading up to a sale we take available evidence into account. We may not be able to accept a provider's claim that certain information was given to a

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consumer if there is no record of that information being given.

Acceptable Use Policies

When a provider has an **Acceptable Use Policy** in place to govern how a consumer can use a product the provider should draw the consumer's attention to the Acceptable Use Policy before the sale, and explain:

- how the Acceptable Use Policy could impact on the consumer's use of the product
- what action it may take if the Acceptable Use Policy is breached.

Additional technical information about a product

Further to the information requirements about technical limitations set out in the Telecommunications Consumer Protections Code, a provider should also tell the consumer, when appropriate, if using a particular technology may or will affect the consumer's use of other devices the consumer may currently rely upon, such as an existing mobile handset, modem or alarm.

Automatic deduction from a consumer's bank account or credit card

When a consumer must agree to automatic deduction from their bank account or credit card as part of the service requirements, the provider must clearly inform the consumer of this, particularly if the service is a pre-paid service.

Entering a contract for a product for someone else to use

When a provider knows (or reasonably ought to know) a consumer entering a contract for a product is not going to be the end user it should tell that consumer:

- they will be the account holder
- they have rights and obligations as account holder
- that risks are involved with entering a contract for a product for someone else, and
- how to limit their exposure to debt.

Additional information a provider may also communicate to the consumer includes:

- they are fully responsible for the product even if they get no benefit from it
- they are responsible for paying bills for the product even if the bills are sent to the end user
- they will continue to be responsible for the product until account ownership is transferred to the end user, or supply of the product is terminated
- they can limit the end user's ability to make changes to the account, and
- the provider can restrict access to some parts of the product (for example, IMR or barring mobile premium services), but this is not the same as setting a limit on the end user's usage.

Dealing with a dispute

When dealing with a dispute about pre-sale information or conduct we ask for information from both the consumer and the provider. This may include:

- records created at the time the agreement was entered into, including call recordings and written documents
- statements of recollection from the parties involved in the discussions
- critical information summaries for the products, if relevant
- customer care records
- details of how the consumer used the product, including any usage records
- details of what the consumer would have done differently, had they known the correct information, for example what other product they would have purchased.

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Outcomes

When, in our view, a provider misled the consumer or did not give a consumer appropriate information before they agreed to a sale, outcomes may include the provider:

- giving the consumer the appropriate information about the product
- addressing any detriment caused by misinformation or misleading conduct
- refunding some or all of the money the consumer spent to buy or use the product
- releasing the consumer from contract with no exit fee if this is appropriate
- providing the consumer with a product that meets their requirements, though not necessarily at the same cost or under the same terms and conditions.

Effective date: 11 March 2016

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